

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 547 of 2007()

ST.1595/2005 of THE JFCM COURT (MARAD CASES), KOZHIKODE.

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PETITIONER:

R.M. SAILESH KUMAR,
S/O. KARUNAKARAN,
AGED 37, SREEPADAM,
RAMUNNY ROAD,
KARAPARAMBA P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.WILSON URMESE

RESPONDENTS:

1. P.K. DINESH KUMAR,
S/O. HARICHANDRAN NAMBIAR,
MIDLAND BUILDERS,
P.K. COMPLEX,
R.C. ROAD,
CALICUT.
2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 547 OF 2007

Dated this the 1st day of March, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. According to the respondent/complainant, cheques were issued by the petitioner to the complainant for the discharge of a liability due to the wife and mother-in-law of the complainant. The cheques were dishonoured. After allegedly observing the statutory time table, the complainant had come to court. The petitioner has appeared before the learned Magistrate. Subsequently, he could not appear. Therefore, the learned Magistrate has now issued a non-bailable warrant of arrest to procure the presence of the petitioner.

2. The learned counsel for the petitioner has, in these circumstances, come to this Court with this Crl.M.C. under Sec.482 of the Cr.P.C. He contends that the proceedings are liable to be quashed under Sec.482 of the Cr.P.C. Two reasons are urged. First of all, it is contended that the liability is to the wife and mother-in-law of the complainant

and not to the complainant. This is not a valid defence in law. A cheque issued for the discharge of a liability not personally between the drawer and the payee does also fall within the sweep of Sec.138 of the N.I. Act. That the cheque was issued to the complainant even admittedly only for the discharge of liability to his wife and mother-in-law is therefore not a valid reason in law which would justify the quashing of the complaint.

3. It is next contended that the cheque has been issued as security and the same has been misused by the complainant. A decision on that contention cannot obviously be given at this stage in proceedings under Sec.482 of the Cr.P.C. That contention must be raised and substantiated before the trial court. Thirdly, it is contended that there has been discharge of the liability. Annexure-B series vouchers are relied on. Even going by the case of the petitioner, the entire liability has not been discharged, even if Annexure-B were accepted in toto. The plea of discharge cannot also, in these circumstances, be accepted at this stage.

4. Finally, the learned counsel for the petitioner submits that the petitioner is prepared to surrender before the learned Magistrate now. But he apprehends that his application for

regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, that the petitioner has come to this Court for a direction to the learned Magistrate to release him on bail when he appears before the learned Magistrate.

5. I do not find any reason to quash the complaint. I do not find any reason to issue any directions under Sec.482 of the Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to

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the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge